

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOD SUPER FAST PIZZA, LLC, a Delaware  
corporation,

Plaintiff,

v.

CARL CHANG; CMCB VENTURES, LLC, a  
Washington corporation; and PIEOLOGY  
SPECTRUM, LLC, a Delaware corporation,

Defendants.

CASE NO. 2:12-CV-01359-TSZ

**CARL CHANG'S ANSWER TO  
SECOND AMENDED COMPLAINT**

**JURY DEMAND**

AND RELATED COUNTERCLAIM

Defendant Carl Chang (“Chang”), for himself and for no other defendant, hereby submits his Answer to plaintiff MOD Super Fast Pizza, LLC’s (“MOD”) Second Amended Complaint (the “Complaint”). Unless indicated differently, each paragraph below corresponds with the paragraph of the Complaint bearing the same number. To the extent that the unnumbered paragraphs, captions, and/or headings in the Complaint are treated as allegations, such paragraphs, captions, and headings are hereby denied.

2. Chang admits that he is a manager of a company that owns and operates pizza restaurants in Southern California under the name “Pieology Pizzeria.” Chang admits that Pieology Pizzeria is not connected to, affiliated with, or authorized by MOD. Except as expressly admitted and alleged herein, Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

1. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

2. Chang admits that he is a resident of Southern California. Except as expressly admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

3. Chang admits that CMCB is a limited liability company organized under the laws of the State of Washington, with its principal place of business in Rancho Santa Margarita, California. Except as expressly admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

4. Chang admits that Pieology Spectrum, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Rancho Santa Margarita, California. Except as expressly admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

5. Chang admits that The Little Brown Box, LLC (“LBBP”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Rancho Santa Margarita, California. Chang admits that Pieology Spectrum, LLC is wholly-owned

1 by LBBP. Except as expressly admitted and alleged herein, Chang denies the allegations contained  
2 in the corresponding paragraph of the Complaint.

3 6. Chang admits that Pieology Franchise, LLC is a limited liability company organized  
4 under the laws of the State of Delaware, with its principal place of business in Rancho Santa  
5 Margarita, California. Chang admits that Pieology Franchise, LLC is wholly-owned by LBBP,  
6 which is its sole member. Except as expressly admitted and alleged herein, Chang denies the  
7 allegations contained in the corresponding paragraph of the Complaint.

## 8 **II. JURISDICTION AND VENUE**

9 1. The allegations contained in the corresponding paragraph of the Complaint are legal  
10 conclusions and require no response from Chang. To the extent a response is required, Chang  
11 admits that this Court has subject matter jurisdiction over the claims alleged in the Complaint.

12 2. The allegations contained in the corresponding paragraph of the Complaint are legal  
13 conclusions and require no response from Chang. To the extent a response is required; Chang  
14 denies that venue is proper in this judicial district.

15 3. The allegations contained in the corresponding paragraph of the Complaint are legal  
16 conclusions and require no response from Chang. To the extent a response is required, Chang  
17 denies the allegations contained in the corresponding paragraph of the Complaint.

## 18 **III. FACTS**

### 19 **CREATION AND DEVELOPMENT OF MOD'S**

#### 20 **TRADE DRESS AND TRADE SECRETS.**

21 1. Chang admits that, in or around May 2008, CMCB made an investment in MOD, and  
22 acquired 150 "Class A Units" in MOD. In or around May 2010, CMCB returned those "Class A  
23 Units" to MOD, and MOD returned to CMCB the money it had invested. Chang denies that he  
24 invested in MOD in his individual capacity. Except as expressly admitted and alleged herein,  
25 Chang lacks sufficient knowledge or information regarding the allegations contained in the  
26 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
27 allegations.

2. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

3. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

4. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

5. Chang denies that MOD restaurants feature a distinctive, non-functional combination of design, look, feel, menu, and style of service. Chang lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

6. Chang denies that MOD owns any protectable trade dress. Chang denies that MOD uses a distinctive, non-functional combination of features. Chang lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

7. Chang admits that the articles quoted in the corresponding paragraph of the Complaint in all respects speak for themselves. Chang denies that MOD owns any protectable trade dress. Chang denies that the “recognition and popularity of the MOD trade dress is evident” from the articles quoted in the corresponding paragraph of the Complaint. Chang lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

8. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

1           9.       Chang lacks sufficient knowledge or information regarding the allegations contained  
2 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
3 allegations.

4                               **DEFENDANTS' BACKGROUND WITH MOD**

5           10.       Chang lacks sufficient knowledge or information regarding the allegations contained  
6 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
7 allegations.

8           11.       Chang lacks sufficient knowledge or information regarding the allegations contained  
9 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
10 allegations.

11           12.       Chang lacks sufficient knowledge or information regarding the allegations contained  
12 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
13 allegations.

14           13.       Chang lacks sufficient knowledge or information regarding the allegations contained  
15 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
16 allegations.

17           14.       Chang lacks sufficient knowledge or information regarding the allegations contained  
18 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
19 allegations.

20           15.       Chang lacks sufficient knowledge or information regarding the allegations contained  
21 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
22 allegations.

23           16.       Chang lacks sufficient knowledge or information regarding the allegations contained  
24 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
25 allegations.

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27

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17. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

18. Chang admits that LBBP and James Markham entered an agreement on or about March 1, 2010, and that that agreement in all respects speaks for itself. Except as expressly admitted and alleged herein, Chang denies the remaining allegations of the corresponding paragraph of the Complaint.

19. Chang admits that LBBP and James Markham entered an agreement on or about June 21, 2010, and that that agreement in all respects speaks for itself. Chang admits that LBBP complied with its obligations under the agreement, and that it claims ownership of the assets purchased therein. Except as expressly admitted and alleged herein, Chang denies the remaining allegations of the corresponding paragraph of the Complaint.

20. Chang admits that, in or around May 2008, CMCB made an investment in MOD, and acquired 150 "Class A Units" in MOD. In or around May 2010, CMCB returned those "Class A Units" to MOD, and MOD returned to CMCB the money it had invested. Chang denies that he invested in MOD in his individual capacity. Except as expressly admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph of the Complaint

21. Chang admits that, in connection with its investment in MOD, CMCB executed MOD's limited liability company agreement. Chang admits that that agreement, in all respects, speaks for itself. Chang admits that, on occasion and in his capacity as a representative of CMCB, he received updates regarding MOD. Except as expressly admitted and alleged herein, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

### DEFENDANTS' UNLAWFUL ACTIVITIES

22. Chang admits that Pieology Spectrum, LLC was formed in March 2010. Chang lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

23. Chang admits that LBBP and James Markham entered into an agreement on or about June 21, 2010, and that that agreement in all respects speaks for itself. Chang admits that LBBP complied with its obligations under the agreement, and that it claims ownership of the assets purchased therein. Chang lacks knowledge or information sufficient to admit or deny the remaining allegations of the corresponding paragraph of the Complaint, and, on that basis, denies all such allegations.

24. Chang admits that Pieology Pizzeria in Fullerton, California opened in 2011. Chang denies utilizing, relying on, sharing, taking advantage of, exploiting, or communicating to third parties any confidential information or trade secrets belonging to MOD. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

25. Chang admits that James Markham is not a member of Pieology Spectrum, LLC, and that he has no ownership interest or professional role with Pieology Pizzeria. Chang admits that he has an indirect ownership interest in Pieology Spectrum, LLC, and Pieology Pizzeria, and that he is involved in the operation of the same. Chang denies that any defendant is engaging in the “unauthorized exploitation of MOD’s intellectual property, including its trade dress, trade secrets, [or] confidential information.” Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

26. Chang admits that the Pieology website states that, inter alia, “Pieology prides itself on providing the best tasting, healthiest kustom pizza in the world. Using only the freshest ingredients, Pieology provides smoking hot pizzas in under 5 minutes.” Chang further admits that the Pieology website in all respects speaks for itself.

27. Chang denies that Pieology’s design, look, feel, menu, and/or style of service are confusingly similar to MOD’s restaurants.

a. Chang admits that Pieology offers individualized pizzas, made to order, cooked at a temperature sufficient to cook a pizza in approximately five minutes, in ovens visible to

1 the customer, and served within approximately five minutes. Chang lacks sufficient knowledge or  
 2 information about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants,  
 3 and, on that basis, denies those allegations. Except as expressly admitted and alleged herein, Chang  
 4 denies the allegations contained in the corresponding paragraph of the Complaint.

5 b. Chang admits that Pieology offers plain cheese pizza at one price, and that it  
 6 offers pizzas with unlimited toppings at a second price. Chang lacks sufficient knowledge or  
 7 information about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants,  
 8 and, on that basis, denies those allegations.

9 c. Chang admits Pieology offers seven pizzas with pre-determined toppings,  
 10 that it identifies these pizzas by number, and that six of these pizzas are the same price as a as pizza  
 11 with unlimited toppings. Chang admits that the Pieology's #3 pizza has bbq sauce, chicken,  
 12 mozzarella, gorgonzola, red onion, and cilantro. Chang lacks sufficient knowledge or information  
 13 about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants, and, on that  
 14 basis, denies those allegations. Except as expressly admitted and alleged herein, Chang denies the  
 15 allegations contained in the corresponding paragraph of the Complaint.

16 d. Chang admits that Pieology offers "strips" made from pizza dough and  
 17 topped with either herb butter or a cinnamon sugar sauce. Chang lacks sufficient knowledge or  
 18 information about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants,  
 19 and, on that basis, denies those allegations. Except as expressly admitted and alleged herein, Chang  
 20 denies the allegations contained in the corresponding paragraph of the Complaint.

21 e. Chang admits that Pieology offers salads. Chang lacks sufficient knowledge  
 22 or information about MOD's restaurants to admit or deny the allegations regarding MOD's  
 23 restaurants, and, on that basis, denies those allegations.

24 f. Chang denies each and every allegation contained in the corresponding  
 25 paragraph of the Complaint.

26 g. Chang denies each and every allegation contained in the corresponding  
 27 paragraph of the Complaint.



1 h. Chang admits that, at one time, Pieology sold individually wrapped Hostess  
2 “Ding Dongs” for \$1.00. Chang admits that Pieology displayed the Ding Dongs on a circular place  
3 near the cash register. Chang lacks sufficient knowledge or information about MOD’s restaurants  
4 to admit or deny the allegations regarding MOD’s restaurants, and, on that basis, denies those  
5 allegations. Except as expressly admitted and alleged herein, Chang denies the allegations  
6 contained in the corresponding paragraph of the Complaint.

7 i. Chang admits that Pieology serves its pizzas on a round tray lined with paper  
8 with the customer’s name written in black marker, and that a server shouts the customer’s name  
9 when an order is ready. Chang lacks sufficient knowledge or information about MOD’s restaurants  
10 to admit or deny the allegations regarding MOD’s restaurants, and, on that basis, denies those  
11 allegations. Except as expressly admitted and alleged herein, Chang denies the allegations  
12 contained in the corresponding paragraph of the Complaint.

13 j. Chang lacks sufficient knowledge or information about the allegations in the  
14 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
15 allegations.

16 28. Chang denies each and every allegation contained in the corresponding paragraph of  
17 the Complaint.

18 29. Chang lacks sufficient knowledge or information regarding the allegations contained  
19 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
20 allegations.

21 30. Chang denies each and every allegation contained in the corresponding paragraph of  
22 the Complaint.

23 31. Chang admits that the Pieology website states that it is “fast expanding.” Chang  
24 admits that LBBP is pursuing opportunities for additional locations and potential franchise  
25 opportunities, and further admits that Franchise has entered into franchise agreements and  
26 development rights agreements on behalf of Defendants. Chang admits that Franchise was formed  
27 in 2012, and further admits that Franchise receives franchise fees and royalties from franchisees.

1 Except as expressly admitted and alleged herein, Chang denies the allegations contained in the  
2 corresponding paragraph of the Complaint.

#### 3 **IV. CLAIMS AND CAUSES OF ACTION**

##### 4 **Count 1: Trade Dress Infringement Under 15 U.S.C. § 1125(a)**

5 1. In response to the corresponding paragraph of the Complaint, Chang hereby repeats  
6 and incorporates herein by reference the responses to the preceding paragraphs, as though fully set  
7 forth herein.

8 2. Chang denies each and every allegation contained in the corresponding paragraph of  
9 the Complaint.

10 3. Chang denies each and every allegation contained in the corresponding paragraph of  
11 the Complaint.

12 4. Chang denies each and every allegation contained in the corresponding paragraph of  
13 the Complaint.

14 5. Chang denies each and every allegation contained in the corresponding paragraph of  
15 the Complaint.

16 6. Chang denies each and every allegation contained in the corresponding paragraph of  
17 the Complaint.

##### 18 **Count 2: Misappropriation of Trade Secrets Under RCW 19.108 et seq.**

19 7. In response to the corresponding paragraph of the Complaint, Chang hereby repeats  
20 and incorporates herein by reference the responses to the preceding paragraphs, as though fully set  
21 forth herein.

22 8. Chang lacks sufficient knowledge or information regarding the allegations contained  
23 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
24 allegations.

25 9. Chang lacks sufficient knowledge or information regarding the allegations contained  
26 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
27 allegations.

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Butler & Mitchell LLP

10. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

11. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

12. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

13. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

### **Count 3: Tortious Interference with Contractual Relations**

14. In response to the corresponding paragraph of the Complaint, Chang hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

15. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

16. Chang lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

17. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

18. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

### **Count 4: Breach of Contract**

19. In response to the corresponding paragraph of the Complaint, Chang hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

20. Chang admits that, in connection with its investment in MOD, CMCB executed MOD's limited liability company agreement. Chang admits that that agreement, in all respects, speaks for itself. Chang denies the allegations contained in the corresponding paragraph of the Complaint that characterize the limited liability company agreement. Chang lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

21. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

22. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

23. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

24. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

#### **Count 5: Civil Conspiracy**

25. In response to the corresponding paragraph of the Complaint, Chang hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

26. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

27. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

28. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

**Count 6: Permanent Injunctive Relief**

29. In response to the corresponding paragraph of the Complaint, Chang hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

30. Chang denies each and every allegation contained in the corresponding paragraph of the Complaint.

31. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Chang. To the extent a response is required, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

32. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Chang. To the extent a response is required, Chang denies the allegations contained in the corresponding paragraph of the Complaint.

**V. AFFIRMATIVE DEFENSES**

In further answer to the Complaint, Chang asserts the following separate and affirmative defenses. Defendant deserves the right to raise additional affirmative defenses as they become known to it through discovery or investigation.

**FIRST AFFIRMATIVE DEFENSE**

1. Chang cannot be liable for the damages, if any, alleged in the Complaint and in each and every cause of action therein because each and every cause of action fails to state a claim and/or cause of action upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

2. Chang alleges that each of MOD's purported claims for relief against Chang is frivolous and unsupported.

**THIRD AFFIRMATIVE DEFENSE**

3. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

4. All of MOD's purported causes of action against Chang are barred by the applicable statutes of limitations.

FIFTH AFFIRMATIVE DEFENSE

5. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

7. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

8. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of acquiescence.

NINTH AFFIRMATIVE DEFENSE

9. MOD's alleged trade dress is not protectable trade dress, including, and without limitation, because the alleged trade dress is non-distinctive, lacks secondary meaning, lacks secondary meaning in the geographic area where the Pieology restaurants are located, and/or is both utilitarian and aesthetically functional.

TENTH AFFIRMATIVE DEFENSE

10. MOD's alleged trade secrets are not protectable trade secrets.

ELEVENTH AFFIRMATIVE DEFENSE

11. Each of MOD's purported causes of action against Chang fails because Chang has complied with all of his legal obligations with respect to MOD.

TWELFTH AFFIRMATIVE DEFENSE

12. MOD has not been damaged in the sums or manner alleged, or in any sum or manner, or at all.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Upon information and belief, Chang states that MOD failed to mitigate, reduce, or avoid its damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Any injury or damage suffered or sustained by MOD, either as alleged in the Complaint or at all, was directly and proximately caused and contributed to by persons and entities other than Chang.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Chang alleges that it cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory allegations contained in the Complaint. Accordingly, Chang expressly reserves the right to assert further defenses if, and to the extent that such affirmative defenses become available.

**VI. PRAYER FOR RELIEF**

WHEREFORE, defendant Chang prays for judgment as follows:

- A. That MOD take nothing by its Complaint and that judgment be entered in favor of LBBP;
- B. That Chang be awarded its costs and attorneys' fees incurred herein; and
- C. That the Court grant such other relief as it deems just and proper.

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**VII. JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38 Chang demands a trial by jury on all issues so triable.

DATED: November 26, 2013

JEFFER MANGELS BUTLER & MITCHELL LLP

By: /s/ JESSICA BROMALL SPARKMAN

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